INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Summary of Argument	5
Argument	13
I. Congress in the Nationality Act of 1940 has reenacted the rule that a willingness to bear arms in defense of the United States is a prerequisite for admission to American citizenship	15
A. The decisions of this Court holding that an alien's willingness to bear arms in defense of the United States was a prerequisite for admission to citizenship were well known and widely discussed	15
B. The decisions of this Court holding that an alien's willingness to bear arms in defense of the United States was a prerequisite for admission to citizenship were approved by Congress, through acquiescence and through repeated refusal to enact legislation overturning those decisions	17
C. The rule that an alien's willingness to bear arms in defense of the United States is a prerequisite for admission to citizenship was reenacted by Congress in 1940	23
II. The rule that an alien applicant for citizenship must be willing to bear arms in defense of the United States is consistent with the basic pattern of other legislation dealing with immigration and naturalization, and does not conflict with the First Amendment in any conceivable aspect	30
A. Naturalization is a matter of statute, not of constitutional right	32
B. The whole fabric of our immigration and naturalization laws negatives petitioner's contention that he is entitled to stand on a basis of equality with citizen conscientious objectors	33
C. The freedom of religion guaranteed by the First Amendment does not include an exemption on religious grounds from military service or from the duty of bearing arms	38

684454—46—1

Argument—Continued. Page

III. Petitioner does not come within the 1942 amendments to the Nationality Act of 1940 which permit naturalization of noncombatants who have served in the armed forces 45

IV. While the *Schwimmer*, *Macintosh*, and *Bland* cases are not open for reconsideration here in view of subsequent Congressional action, the logic of events since they were decided confirms their soundness 55

Conclusion 62

Appendix A—Nationality Act of 1940 with amendments 63

Appendix B—Other pertinent Naturalization statutes 69

CITATIONS

Cases:

Aldecoa, In re, 22 F. Supp. 659 18

Apex Hosiery Co. v. *Leader*, 310 U. S. 469 ..... 6, 25, 27

Atlantic Cleaners & Dyers v. *United States*, 286 U. S. 427 50

Beale v. *United States*, 71 F. 2d 737 ..... 18, 22

Clarke's Case, 301 Pa. 321 18

Gully v. *First National Bank*, 299 U. S. 109 50

Helvering v. *Griffiths*, 318 U. S. 371 56

Helvering v. *Hallock*, 309 U. S. 106 56

Helvering v. *Stockholm etc., Bank*, 293 U. S. 84 50

Helvering v. *Winmill*, 305 U. S. 79 25

Kinloch, In re, 53 F. Supp. 521 ..... 49, 53

Losey, In re, 39 F. Supp. 37 33

Luria v. *United States*, 231 U. S. 9 32

Mabee v. *White Plains Publishing Co.*, No. 57, October, 1945, term, decided February 11, 1946 44

Maney v. *United States*, 278 U. S. 17 32

Missouri v. *Ross*, 299 U. S. 72 25

Nielsen, In re, 60 F. Supp. 240 ..... 49, 53

Ozawa v. *United States*, 260 U. S. 178 35

Perkins v. *Elg*, 307 U. S. 325 38

Puerto Rico v. *Russell & Co.*, 288 U. S. 476 50

Robertson v. *Railroad Labor Board*, 268 U. S. 619 49

Sawyer, In re, 59 F. Supp. 428 ..... 49, 53

Schneiderman v. *United States*, 320 U. S. 118 57

Summers, In re, 325 U. S. 561 ..... 5, 16

Toyoto v. *United States*, 268 U. S. 402 ..... 35, 47, 53

United States v. *Bland*, 283 U. S. 636 ..... 5, 6, 10, 12, 13, 15, 16, 22, 23, 27, 55, 56, 57

United States v. *Elgin, J. & E. Ry.*, 298 U. S. 492 25

United States v. *Gay*, 264 U. S. 353 37

United States v. *Ginsberg*, 243 U. S. 472 ..... 32, 36

United States v. *Macintosh*, 283 U. S. 605 ..... 5, 6, 10, 12, 13, 15, 16, 22, 23, 25, 27, 32, 39, 42, 55, 56, 57

Cases—Continued — Page

United States v. *Midwest Oil Co.*, 236 U. S. 459 — 23
United States v. *Ryan*, 284 U. S. 167 — 25
United States v. *Schwimmer*, 279 U. S. 644 — 5, 6, 10, 12, 13, 15, 16, 22, 23, 27, 32, 38, 55, 56, 57
United States v. *Thind*, 261 U. S. 204 — 35
United States v. *Wong Kim Ark*, 169 U. S. 649 — 34, 35
Warkentin, In re, 93 F. 2d 42, certiorari denied sub nom. *Warkentin* v. *Schlolfeldt*, 304 U. S. 563 — 18
Yamashita v. *Hinkle*, 260 U. S. 199 — 35
Yasui v. *United States*, 320 U. S. 115 — 34
Zartarian v. *Billings*, 204 U. S. 170 — 32

Constitution:
Article I, Section 2, Clause 2 — 36
Article I, Section 3, Clause 3 — 36
Article I, Section 8 — 32
Article II, Section 1, Clause 5 — 36
Article III — 44
First Amendment — 8, 31, 41
Second Amendment — 41
Fourteenth Amendment — 34, 35
Fifteenth Amendment — 35

Statutes:
Act of December 17, 1943, c. 344, 57 Stat. 600 — 34
Act of December 7, 1942, c. 690, 56 Stat. 1041 — 45, 54
Act of March 27, 1942, c. 199, 56 Stat. 176, 182 — 45
Act of August 16, 1940, c. 684, 54 Stat. 788 — 19
Act of July 2, 1940, c. 509, 54 Stat. 715 — 19
Act of July 1, 1940, c. 495, 54 Stat. 707 — 19
Act of August 9, 1939, c. 610, 53 Stat. 1273 — 19
Act of June 21, 1939, c. 234, 53 Stat. 851 — 19, 48, 52
Act of June 20, 1939, c. 224, 53 Stat. 843 — 19
Act of June 20, 1938, c. 822, 52 Stat. 1249 — 19
Act of August 23, 1937, c. 735, 50 Stat. 743 — 19, 48, 52
Act of July 30, 1937, c. 545, 50 Stat. 547, Sec. 3 — 19
Act of June 25, 1936, c. 801, 49 Stat. 1917 — 19
Act of June 24, 1935, c. 288, 49 Stat. 395 — 19, 48, 52
Act of June 15, 1935, c. 255, 49 Stat. 376 — 19
Act of May 24, 1934, c. 344, 48 Stat. 797 — 19
Act of April 19, 1934, c. 154, 48 Stat. 597 — 19
Act of July 2, 1932, c. 395, 47 Stat. 571 — 19
Act of June 28, 1932, c. 283, 47 Stat. 336 — 19
Act of May 25, 1932, c. 203, 47 Stat. 165 — 19, 48, 52
Act of March 3, 1931, c. 442, 46 Stat. 1511 — 19
Act of February 11, 1931, c. 118, 46 Stat. 1087 — 19
Act of July 3, 1930, c. 835, 46 Stat. 854 — 19
Act of June 21, 1930, c. 559, 46 Stat. 791 — 19
Act of March 4, 1929, c. 683, 45 Stat. 1545 — 48, 52

Statutes—Continued. Page

Act of May 26, 1926, c. 398, 44 Stat. 654 ..... 48, 51, 52, 70
Act of July 19, 1919, c. 24, 41 Stat. 222 ..... 48, 51
Act of May 9, 1918, c. 69, 40 Stat. 542 ..... 48, 51
Act of March 2, 1907, sec. 2, 34 Stat. 1228 37
Act of June 29, 1906:
Section 4, Subdivision Third 15, 23, 69
Section 4, Subdivision Fourth 15, 20, 23, 69
Joint Resolution of June 29, 1938, c. 819, 52 Stat. 1247 19
United States Code:
Title 8:
Chapter 7, 1940 ed.:
Section 136 (a) 34
Section 136 (c) 34
Section 136 (d) 34
Section 136 (e) 35
Section 136 (f) 35
Section 136 (g) 35
Section 136 (i) 35
Section 136 (n) 34
Section 136 (o) 35
Section 137 34
Section 154 35
Section 155 35
Section 703, Supp. IV 35
Section 704 35
Section 707 (a) 36
Section 713–716 36
Section 735 (a) 36
Section 739 36
Nationality Act of 1940:
Section 304 36
Section 307 (a) 24, 63
Section 313 36
Section 316 36
Section 323 (a) 45, 63
Section 324 ..... 48, 52
Section 335 (a) 24, 65
Section 335 (b) 25, 65
Section 401 (c) 38
Section 401 (d) 38
Section 402 38
Sections 404–406 38
Section 504 24
Section 701 66
Section 702 67
Section 704 68
Title III 45

Statutes—Continued. Page

Judicial Code, Section 24 (1), 28 U. S. C. 24 (1) 50

R. S. 2000; 8 U. S. C. 903a 37

Treaties:

Kellogg-Briand Pact, 46 Stat. 2343 58

Treaty of January 22, 1863, Art. III, 17 Stat. 941, 942-943 37

Treaty of May 13, 1870, Art. III, 16 Stat. 775, 776 37

Treaty of August 1, 1868, 16 Stat. 743, 745 37

Treaty of July 27, 1868, Art. IV, 16 Stat. 735, 736 37

Treaty of May 26, 1868, Art. IV, 15 Stat. 661, 662 37

Art. III of Protocol, 15 Stat. at 664, 666 37

Treaty of February 22, 1868, Art. IV, 15 Stat. 615, 616 37

Miscellaneous:

1 Annals of Congress 434, 749, 751, 796, 797 ..... 40, 41

Cardozo, *The Growth of the Law* 56

Codification of the Nationality Laws of the United States,
Part 1, House Committee Print, 76th Cong., 1st sess. 28, 30, 37

Notes under draft, sec. 402 37

67 Cong. Rec. 4784-4785 52

67 Cong. Rec. 7334 52

67 Cong. Rec. 7392 52

67 Cong. Rec. 7956-7959 52

67 Cong. Rec. 8533 52

67 Cong. Rec. 9749 52

67 Cong. Rec. 9799 52

67 Cong. Rec. 9801 52

72 Cong. Rec. 6366-6367 22

75 Cong. Rec. 13354-13357 22

88 Cong. Rec. 1580 47

88 Cong. Rec. 1790 47

88 Cong. Rec. 1791 47

88 Cong. Rec. 1794 47

4 Elliot's Debates 334-335 40

2 *id.* 331 40

3 *id.* 657-659 40

4 *id.* 243-244 40

Federalist, The, No. XLI 32

Hearings on H. R. 297, 72d Cong., 1st sess. 17, 20, 21

Hearings on H. R. 3547, 71st Cong., 1st sess. 17, 20, 21

Hearings on the Nationality Act 28, 37, 52

Holmes, *The Common Law*, 1 58

H. R. 3547, 71st Cong., 1st sess., 71 Cong. Rec. 2184 19

H. R. 297, 72d Cong., 1st sess., 75 Cong. Rec. 95 ..... 19, 20, 21

H. R. 298, 72d Cong., 1st sess., 75 Cong. Rec. 95 19

H. R. 1528, 73d Cong., 1st sess., 77 Cong. Rec. 90 ..... 19, 21

H. R. 5170, 74th Cong., 1st sess., 79 Cong. Rec. 1356 ..... 19, 21

H. R. 8259, 75th Cong., 1st sess., 81 Cong. Rec. 9193 ..... 19, 21

H. Rep. 382, 69th Cong., 1st sess. 52

Miscellaneous—Continued

	Page
H. Rep. 871, 69th Cong., 1st sess.	32
H. Rep. 2396, 76th Cong., 3d sess.	27, 30
H. Rep. 1710, 77th Cong., 2d sess.	47
H. Rep. 1765, 77th Cong., 2d sess.	47
H. Rep. 1896, 77th Cong., 2d sess.	47
Hughes, *The Supreme Court of the United States*, 67–68	28
Letter, To the Town of Providence, 6 Williams, Collected Works (Narragansett Club ed. 1866–74), reprinted in Ernst, *The Political Thought of Roger Williams*, 74	42
Naturalization Regulations of July 1, 1929, Rule 8 (c)	23
Pound, *Interpretations of Legal History*, 1	56
S. 3275, 72d Cong., 1st sess., 75 Cong. Rec. 2800	19, 21
S. 165, 76th Cong., 1st sess., 84 Cong. Rec. 67	19, 21
S. Rep. 596, 69th Cong., 1st sess.	32
S. Rep. 2150, 76th Cong., 3d sess.	28, 30, 32
S. Rep. 989, 77th Cong., 2d sess.	47
S. Rep. 1664, 77th Cong., 2d sess.	47

In the Supreme Court of the United States

OCTOBER TERM, 1945

No. 572

JAMES LOUIS GIROUARD, PETITIONER

v.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The district court wrote no opinion when it admitted petitioner to citizenship (R. 11–12). The opinion of the circuit court of appeals (R. 21–27) and the dissent (R. 27–34) are reported at 149 F. 2d 760.

JURISDICTION

The judgment of the circuit court of appeals was entered June 1, 1945 (R. 35). On August 27, 1945, Mr. Justice Black extended to October 30 petitioner's time to file a petition for a writ of certiorari (R. 35). The petition was filed on that date and was granted December 10, 1945

(R. 36). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether an alien who is unwilling because of religious scruples to bear arms in defense of this country, but who is willing to serve in a non-combatant capacity, may be admitted to citizenship.

STATUTES INVOLVED

The pertinent provisions of the Nationality Act of 1940 are set forth in Appendix A, *infra*, pp. 63–68. Other provisions of law, which will be referred to in the Argument, are set forth in Appendix B, *infra*, pp. 69–70.

STATEMENT

Petitioner was born in Canada in 1902. He came to the United States in 1923 and has resided in this country since that time (R. 1, 14). In 1940 he filed a declaration of intention to become a citizen of the United States in the United States District Court for the District of Massachusetts, describing himself as an engineer, and stating that he had a wife and daughter living with him (R. 1–2). On January 26, 1943, petitioner filed a petition for naturalization (R. 3–7). In his preliminary form for the petition, he stated that he was willing to take the following oath of allegiance (R. 5–6):

> I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion.

In answer to the question in the form as to whether he was willing to take up arms in defense of the United States, if necessary, petitioner stated, "No (Non-combatant) Seventh Day Adventist" (R. 6, 14). On preliminary examination before a naturalization examiner on March 9, 1943, petitioner stated that his answer was based solely on religious grounds—"it is a purely religious matter with me, I have no political or personal reasons other than that" (R. 14, 15).

At two places in the record of this case there appears the statement, "In his Selective Service questionnaire he had claimed exemption from both combatant and non-combatant military service as a conscientious objector" (R. 14, 18–19). This reflects, we believe, a misreading of the equivocal report of petitioner's local draft board (R. 17). At any rate, the statement is not true in fact. We have examined petitioner's original

Selective Service questionnaire, and find that he did not claim exemption from all military service, but only from combatant military duty. Throughout this brief, therefore, we disregard the erroneous statements in the record above noted, and deal with petitioner as one who was willing at all times to participate in noncombatant service under the direction of the military authorities.

At a hearing before the district judge on petitioner's application for naturalization on August 1, 1944, petitioner testified that he was a member of the Seventh Day Adventist sect, several thousand of whom, he said, were serving in the armed forces as noncombatants, and that he was willing to serve as a noncombatant, but that he would not bear arms (R. 14). The district court ruled (R. 15):

> That since the Selective Service and Training Act permits, as a matter of right, an applicant for the draft to express a willingness to serve in the armed forces of the United States, but as a non-combatant, then this petitioner by exercising that right is still a person who can take an unqualified oath of allegiance to the United States, and is therefore eligible to citizenship.

It accordingly ordered that petitioner be admitted to citizenship (R. 11–12, 14). On appeal, the order was reversed (R. 21–27, 35), one judge dissenting (R. 27–34).

SUMMARY OF ARGUMENT

I

The basic question at issue, whether an alien willing to perform noncombatant military service but unwilling to bear arms may be admitted to citizenship, turns on the meaning of the Nationality Act of 1940 as amended.

In *United States* v. *Schwimmer*, 279 U. S. 644, *United States* v. *Macintosh*, 283 U. S. 605, and *United States* v. *Bland*, 283 U. S. 636, the Court held, construing earlier statutes, that an alien unwilling without qualification to bear arms in defense of the United States was not entitled to citizenship. While the present case is distinguishable on its facts from those of *Schwimmer* and *Macintosh*, it cannot be distinguished from that of *Bland*. At any rate, the cases have been generally understood by the public, by the profession, and by this Court, as laying down a broad rule of general application. *In re Summers*, 325 U. S. 561, 572.

For over eleven years, from the date of the *Schwimmer* case until the enactment of the comprehensive Nationality Act of 1940, Congress acquiesced in the rule that established the arms-bearing requirement for naturalization. It undertook no affirmative change in the law, in the face of an unbroken current of judicial decision, although on numerous occasions it amended the statutes which prescribed the qualifications for admission to citizenship. And for over eleven

years it refused to overturn the arms-bearing rule by amendment, although during all of that time there were pending before it bills to that end, which were advocated in speeches and on which hearings were had. It is clear, therefore, that Congress approved the rule.

Finally, in the Nationality Act of 1940, Congress reenacted the rule that an alien's willingness to bear arms in defense of the United States was a prerequisite for admission to citizenship. It reenacted without substantial change the statutes considered in the *Schwimmer, Macintosh,* and *Bland* cases, and it gave statutory sanction to the oath which theretofore had been prescribed only administratively. This amounted to a reenactment of the judicial construction which had been placed on those provisions. *Apex Hosiery Co.* v. *Leader,* 310 U. S. 469, 488–489. In these circumstances there is no room for the suggestion that, by not expressly adding the arms-bearing requirement, Congress intended to leave open for judicial reconsideration the point on which this Court had divided in the earlier decisions. The legislative history negatives any such conclusion. Consequently, after 1940, the arms-bearing requirement stood on a new and independent legislative footing.

II

Subject only to the constitutional requirement as to uniformity, the qualifications for naturalization

are for Congress to prescribe; it can condition the offer as it sees fit. The only question for the courts is to ascertain what those requirements are.

There is no basis for petitioner's contention that he is entitled as of right to stand on an equality with citizens who because of religious scruples are likewise unwilling to serve except as noncombatants. The Constitution and laws of the United States have never put aliens and citizens on a parity.

Numerous classes of aliens are excluded from admission because of physical or mental defects or racial origins; persons of similar racial origins or afflicted with like defects may enter the country through birth on its soil. Certain other classes of aliens are subject to deportation because of beliefs, conduct, or potential burden on the community; but we do not deport native-born anarchists, felons, polygamists, prostitutes, paupers, or illiterates. Similar discriminations become apparent on comparing citizenship by birth with citizenship by naturalization; persons of most Asiatic races who can acquire the first are ineligible for the second. And while the alien must be attached to the principles of the Constitution as a prerequisite to obtaining citizenship, the citizen is not required to demonstrate such attachment as a condition of retaining citizenship. Even when the alien has been duly naturalized, he is still not on an equal footing with the native-born citizen,

with respect to eligibility for the Presidency and for Congress, and with respect to freedom to travel; the naturalized citizen risks loss of American nationality through expatriation as a consequence of long-continued residence abroad.

While the problem of ascertaining the Congressional requirements for naturalization is a statutory one, petitioner suggests that these requirements must be construed on the assumption that Congress lacks constitutional power to exact full military service from individuals who have religious scruples against bearing arms.

That assumption is unfounded. The history of the Bill of Rights shows that some states suggested an amendment granting conscientious objectors an exemption from bearing arms and that the first Congress considered a similar proposal. Both failed of adoption. It seems clear, therefore, that the First Amendment's guarantee of religious freedom does not include the right on religious grounds to refuse military service. Petitioner's contention to the contrary involves the obvious *non sequitur* that, since the broader proposal was advisedly rejected, we should read the First Amendment as though it had been adopted.

In view of the existence of the constitutional power to compel military service, the suggestion that the naturalization requirements be read in the light of the legislative exemptions for con-

scientious objectors loses much of its force, particularly in view of the trend to the contrary since 1929 in the naturalization laws. What is left, therefore, is simply another instance of legislative discrimination in favor of citizens, a situation where Congress by statute exacts from an alien a degree of patriotism which it does not similarly exact from a citizen, although it has constitutional power to do so.

III

The 1942 amendments to the Nationality Act of 1940 grant special privileges to aliens who served in the armed forces of the United States in time of war who were not complete conscientious objectors. Petitioner admits that he did not so serve, but contends that the implication of these provisions is that Congress has thereby expressly recognized that the requirements of the oath may be fulfilled by an otherwise qualified alien applicant despite his religious conviction against bearing arms.

But nothing in either the language or the legislative history of the 1942 amendments supports the broad implications which petitioner seeks to draw therefrom. These statutes have the limited purpose of rewarding alien members of the armed forces and alien veterans by facilitating their naturalization. Congress had dealt generally with naturalization in 1940, and had consistently re-

fused to abrogate the rule of the *Schwimmer*, *Macintosh*, and *Bland* cases. We cannot assume that Congress, in dealing with amendments designed to cover only a limited group, intended by silent indirection and without a word of comment to depart from the established rule of exacting from the general body of applicants for citizenship an unqualified promise to bear arms.

The suggestion that the oath cannot mean one thing to an alien veteran and another to an alien non-veteran is, when viewed in the present context, not controlling. A word may have different meanings in different sections of the same act. The argument of consistency moreover breaks down on consideration of the origin of the provision barring complete conscientious objectors from veterans' naturalization benefits.

That proviso dates from similar legislation passed in 1926. Since this was before the decision in the *Schwimmer* case, and since the legislative history is silent as to conscientious objectors generally, it seems reasonable to suppose that the proviso barring the complete conscientious objector from the benefits of the act represented a restrictive amendment rather than one which would broaden the basic statute to include conscientious noncombatants.

It may be that, as a matter of logic, even noncombatant veterans must be excluded if the oath is held to have a rigid meaning in all cases. But

we think that the two can be reconciled. Congress was dealing with what it considered to be two distinct problems, naturalization generally, and naturalization for veterans. As to the former, it insisted that the alien manifest an unqualified willingness to bear arms; as to the veteran, it required only that he should not have been a complete conscientious objector- and did not indicate that it was concerned with the problem generally. The result favors the noncombatant alien veteran over the noncombatant alien non-veteran, a pattern consistent with much else in the naturalization laws.

Petitioner can no more avail himself of the relaxation of the oath for the noncombatant alien veteran than he can claim the benefit of the other statutory waivers included in the 1942 amendments. And the development of the statutory system shows conclusively that Congress had not the slightest intention in 1942 of altering *sub silentio* a consistent rule of general application which for more than ten years it had refused to vary by overt amendment.

IV

In view of the action of Congress in dealing with the arms-bearing requirement, and of its highly significant inaction, that requirement now has an independent legislative basis which can be changed only by Congress and which is not open for reconsideration here.

684454—46——2

This is not a question of common law, or of similar factual situations considered against an equivocal legislative background, or of reconsideration of constitutional doctrine, either independently or in the light of legislative reenactments which necessarily question earlier constitutional decisions. Petitioner here asks the Court to rewrite an Act of Congress in a way that Congress itself has repeatedly refused to do. There is no authority for such action.

This is not to say that we question the soundness of the *Schwimmer*, *Macintosh*, or *Bland* decisions; their wisdom has been confirmed by the national experience since 1929 and 1931.

When those cases were decided, the world was at peace, pacifism was popular, and the denial of citizenship to well-educated individuals because of refusal to bear arms in the highly improbable event of another war accordingly met with predominant professional disapproval. But the question of bearing arms was soon brought into stark immediacy by the logic of events, by the onward march of aggression which struck this country in 1941.

We triumphed in the end because of superior force of arms. We learned once more the lesson that peace and freedom are costly. The liberties which petitioner enjoys along with all the rest were preserved by millions of arms-bearing citizens. While the victory was not won by combatants alone, still the noncombatants were only

auxiliaries, and Congress could reasonably exact a higher degree of service from one asking to join our political society than from those already members of the body politic.

In the light of fifteen years' hindsight, the principle of the *Schwimmer*, *Bland*, and *Macintosh* cases has amply justified itself. After the experience of those years, there is no occasion now to make American citizenship available to one who will not meet the high price that Congress has placed on it.

Argument

The basic question at issue is whether an alien willing to perform noncombatant military service, but unwilling to bear arms may be admitted to citizenship. That question turns on the meaning of the Nationality Act of 1940 as amended. In order to ascertain that meaning, it is necessary at the outset to consider the pertinent legislation in the light of antecedent statutes and of the judicial construction of such antecedent statutes. This is required, not as a mere matter of historical curiosity, but in order to determine whether the rule for which the United States contends is presently based upon legislative enactment, incapable of change except in so far as Congress itself may hereafter amend it, or whether it rests only on judicial decision, subject to being overruled at any time.

Petitioner deals with the 1940 Act without pausing to inquire whether it had reenacted the earlier

statutes together with this Court's interpretations of those statutes (Pet. Br. 9–22), regards the Act as amended generally by implication from amendments designed to reach only a particular class in which he admittedly is not included (Pet. Br. 23–28), and finally seeks to have this Court amend the Act by overruling its decisions dealing with predecessor legislation (Pet. Br. 28–34).

The argument of the United States, on the other hand, considers the basic Nationality Act of 1940 in its proper setting. We point out, first, that the decisions of this Court, holding that, under the earlier legislation, willingness to bear arms in the defense of the United States was a prerequisite for admission to citizenship, were approved by Congress, through acquiescence, through failure to pass amendatory proposals, and finally through reenactment. We then show that the rule is consistent with the basic pattern of other legislation prescribing qualifications for admission to citizenship and that it does not in any conceivable aspect trench upon the domain of the First Amendment. Thereafter we demonstrate that the rule in question was not changed for persons in petitioner's position by the 1942 amendments. And finally, we point out that the earlier decisions are not open for judicial reconsideration because of the intervening legislation approving them, and that in any event their soundness has been confirmed by the verdict of history.

I. CONGRESS IN THE NATIONALITY ACT OF 1940 HAS RE-ENACTED THE RULE THAT A WILLINGNESS TO BEAR ARMS IN DEFENSE OF THE UNITED STATES IS A PREREQUISITE FOR ADMISSION TO AMERICAN CITIZENSHIP

A. *The decisions of this Court holding that an alien's willingness to bear arms in defense of the United States was a prerequisite for admission to citizenship were well known and widely discussed*

In *United States* v. *Schwimmer*, 279 U. S. 644, *United States* v. *Macintosh*, 283 U. S. 605, and *United States* v. *Bland*, 283 U. S. 636, this Court construed Section 4 of the Naturalization Act of June 29, 1906 (*infra*, pp. 69–70), and held that an alien unwilling without qualification to bear arms in defense of the United States was not entitled to citizenship. The Court held that the requirements of subdivision Third of the cited section, requiring the applicant to declare on oath that he would support and defend the Constitution of the United States against all enemies, foreign and domestic, and of subdivision Fourth, that he must be attached to the principles of the Constitution of the United States, were not satisfied unless the applicant was willing unreservedly to bear arms in the event of war. Three members of the Court dissented in the case of *Schwimmer*, four members in the cases of *Macintosh* and *Bland*.

As petitioner contends (Pet. Br. 29–33), the *Schwimmer* and *Macintosh* cases may be distinguished from the present case on their facts.

Mme. Schwimmer was "an uncomprising pacifist", opposed to any form of military force, and stated moreover that she had "no sense of nationalism, only a cosmic consciousness of belonging to the human family." 279 U. S. at 648. Dr. Macintosh reserved the right to make an individual determination of the moral justification of a particular war, 283 U. S. at 617–619. It is, however, impossible so to distinguish the *Bland* decision. There the applicant for citizenship, who had actually spent nine months nursing soldiers in France after World War I, expressed her willingness to defend the country "as far as my conscience as a Christian will allow," and it was evident, as Chief Justice Hughes pointed out in his dissenting opinion, that her reservations related to her religious scruples against bearing arms. (See also the opinion of the Second Circuit holding that Miss Bland could properly take the oath, 42 F. 2d 842.) This Court ruled that she was nevertheless ineligible for citizenship because she would not unqualifiedly agree to bear arms in defense of the United States.

Quite apart from particular factual distinctions, the three cases were generally understood, then and since, as laying down a broad general rule. See *In re Summers*, 325 U. S. 561, 572: "The United States does not admit to citizenship the alien who refuses to pledge military service." And that broad rule was well known and widely discussed, in legal periodicals (Petition for certio-

rari, p. 17) and elsewhere. See Hearings before the House Committee on Immigration and Naturalization on H. R. 3547, 71st Cong., 1st sess., pp. 130–133; Hearings before same on H. R. 297, 72d Cong., 1st sess., pp. 215–225. The circumstance that, as petitioner suggests (Pet. 17), professional comment was preponderantly adverse, indicates that the arms-bearing requirement laid down in those decisions became and doubtless remained a burning issue with significant and articulate sections of the community. We stress this point, not with any purpose of reopening the battle of the law reviews and the other journals of opinion; they simply show that the decisions in question were not mere technical rulings, of interest only to the parties and to specialized practitioners, but were widely known inside and outside the ranks of the legal profession. In such a setting the assumption that Congress must be presumed to have known of these cases is of course more than an improbable hypothesis useful as a canon of construction; it has a substantial basis in fact.

B. *The decisions of this Court holding that an alien's willingness to bear arms in defense of the United States was a prerequisite for admission to citizenship were approved by Congress, through acquiescence and through repeated refusal to enact legislation overturning those decisions.*

For over eleven years, from May 1929, the date of the *Schwimmer* decision, until October 1940,

when it enacted the Nationality Act of 1940 and repealed the earlier provisions considered in the *Schwimmer* and successor cases, Congress took no step to indicate disagreement with the arms-bearing requirement for naturalization. We point out below, pp. 23–30, that the requirement was re-enacted in 1940; here we show that this long acquiescence, even in the absence of reenactment, amounts to an approval.

1. Congress undertook no affirmative change in the law. It had knowledge, from judicial decisions published in the reports, that the state and lower federal courts were following and applying the rule enunciated by this Court. *Clarke's Case*, 301 Pa. 321; *Beale* v. *United States*, 71 F. 2d 737 (C. C. A. 8); *In re Warkentin*, 93 F. 2d 42 (C. C. A. 7), certiorari denied *sub nom. Warkentin* v. *Schlotfeldt*, 304 U. S. 563; see *In re Aldecoa*, 22 F. Supp. 659 (D. Idaho). And it could have ascertained that this Court in 1938 had refused to reconsider its earlier decisions despite the insistence of the petitioner in the *Warkentin* case that it do so. See Pet. in No. 881, Oct. T. 1937, at pp. 7, 25.

2. Between the time of the *Schwimmer* decision, in 1929, and the enactment of the comprehensive revision of the naturalization laws known as the Nationality Act of 1940, Congress on numerous occasions amended the statutes which prescribed the qualifications for admission to citizenship. We collect the pertinent legislation in the

margin.[1] Not one of these amendments dealt with the requirement that the alien seeking admission to citizenship must be unqualifiedly willing to bear arms in behalf of his adopted country.

3. Finally, and we think this circumstance of vital significance, Congress over a period of more than ten years consistently refused to enact bills which would have eliminated the requirement. H. R. 3547, 71st Cong., 1st sess., 71 Cong. Rec. 2184; H. R. 297, 72d Cong., 1st sess., 75 Cong. Rec. 95; H. R. 298, 72d Cong., 1st sess., 75 Cong. Rec. 95; S. 3275, 72d Cong., 1st sess., 75 Cong. Rec. 2600; H. R. 1528, 73d Cong., 1st sess., 77 Cong. Rec. 90; H. R. 5170, 74th Cong., 1st sess., 79 Cong. Rec. 1356; H. R. 8259, 75th Cong., 1st sess., 81 Cong. Rec. 9193; S. 165, 76th Cong., 1st sess., 84 Cong. Rec. 67. The proposal was continuously before Congress from May 29, 1929, two

[1] Act of June 21, 1930, c. 559, 46 Stat. 791; Act of July 3, 1930, c. 835, 46 Stat. 854; Act of February 14, 1931, c. 118, 46 Stat. 1087; Act of March 3, 1931, c. 442, 46 Stat. 1511; Act of May 25, 1932, c. 203, 47 Stat. 165; Act of June 28, 1932, c. 283, 47 Stat. 336; Act of July 2, 1932, c. 395, 47 Stat. 571; Act of April 19, 1934, c. 154, 48 Stat. 597; Act of May 24, 1934, c. 344, 48 Stat. 797; Act of June 15, 1935, c. 255, 49 Stat. 376; Act of June 24, 1935, c. 288, 49 Stat. 395; Act of June 25, 1936, c. 801, 49 Stat. 1917; Section 3 of the Act of July 30, 1937, c. 545, 50 Stat. 547, 548–549; Act of August 23, 1937, c. 735, 50 Stat. 743; Joint Resolution of June 29, 1938, c. 819, 52 Stat. 1247; Act of June 29, 1938, c. 822, 52 Stat. 1249; Act of June 20, 1939, c. 224, 53 Stat. 843; Act of June 21, 1939, c. 234, 53 Stat. 851; Act of August 9, 1939, c. 610, 53 Stat. 1273; Act of July 1, 1940, c. 495, 54 Stat. 707; Act of July 2, 1940, c. 509, 54 Stat. 715; Act of August 16, 1940, c. 684, 54 Stat. 788.

days after the decision in the *Schwimmer* case, through the life of the Congress which enacted the Nationality Act of 1940.

The basic pattern of all these measures was that of H. R. 297, 72d Cong., 1st sess., *supra*, introduced by Mr. Griffin at the first session of Congress after the *Macintosh* decision, which was entitled "A Bill to provide that religious views or philosophical opinions against war shall not debar aliens, otherwise qualified, from becoming citizens." In pertinent part, it provided that the Fourth subdivision of Section 4 of the Act of June 29, 1906 (*supra*, p. 15) should be amended by adding the following sentence:

> Except that no person mentally, morally, and otherwise qualified shall be debarred from citizenship by reason of his or her religious views or philosophical opinions with respect to the lawfulness of war as a means of settling international disputes, but every alien admitted to citizenship shall be subject to the same obligation as the native-born citizen.[2]

Hearings were had before the House Committee on Immigration and Naturalization on H. R. 3547, 71st Cong., 1st sess., and on H. R. 297, 72d Cong., 1st sess., in May 1930 and January 1932, respectively. The proponents of these bills, among whom were included representatives of religious

[2] H. R. 3547, 71st Cong., 1st sess., and H. R. 298, 72d Cong., 1st sess., differed only in the circumstance that they omitted the last clause, beginning "but every alien." The former bill was introduced two days after the *Schwimmer* decision had been handed down.

groups, stated clearly their purpose to overrule the interpretation placed on the oath by the *Schwimmer* and *Macintosh* cases. Hearings on H. R. 3547, pp. 12, 22, 29–57, 73–109, 169–180; Hearings on H. R. 297, pp. 4–7, 10, 12, 15–19, 41–48, 53–56, 66–81, 147, 148. There was opposition on each occasion. Hearings on H. R. 3547, pp. 57–65, 73, 146–169, 181–212; Hearings on H. R. 297, pp. 85–140. Neither bill was reported out.

Bills identical with H. R. 297 were introduced in three later Congresses; these, likewise, never emerged from the files of the committee: H. R. 1528, 73d Cong., 1st sess.; H. R. 5170, 74th Cong., 1st sess.; H. R. 8259, 75th Cong., 1st sess. The other proposals which failed of passage, though they differed in certain minor particulars which we note in the margin,[3] met a like fate: death in committee.

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[3] S. 3275, 72d Cong., 1st sess., "A Bill to permit naturalization of alien conscientious objectors," proposed to amend subdivision Fourth of Section 4 of the Act of 1906 by adding "but an alien otherwise qualified shall not be denied citizenship under any provisions of this Act solely by reason of his refusal on conscientious grounds to promise to bear arms or otherwise participate in war: *Provided*, That nothing in the foregoing provisions shall be construed to affect the obligations of aliens after their admission to citizenship."

S. 165, 76th Cong., 1st sess., "A Bill authorizing the naturalization of certain aliens", provided "That any female alien, otherwise eligible for citizenship under the naturalization laws, shall not be denied a certificate of citizenship for the reason that such alien is conscientiously opposed to war as a method of settling international controversies or has expressed an unwillingness to serve in the armed forces of the United States in time of war with a foreign country."

Thus, for six successive Congresses, over a period of more than a decade, there were continuously pending before the national legislature, in one form or another, proposals looking to the legislative overruling of the doctrine of the *Schwimmer, Macintosh,* and *Bland* cases. That Congress declined to enact these proposals, after hearings and after speeches advocating the change (72 Cong. Rec. 6966–6967; 75 Cong. Rec. 15354–15357), speeches which praised the dissenting opinions, seems to us conclusive proof that the prevailing opinions in this Court reflected the prevailing opinion in the Congress.

4. We think it clear, therefore, that Congress approved the rule laid down in the *Schwimmer, Macintosh* and *Bland* cases, through its acquiescence in the consistent course of judicial decision, through its failure to change the arms-bearing requirement while changing many other requirements of the naturalization laws, and, finally, through its failure to pass bills which would have permitted the naturalization of alien conscientious objectors. As the Court said in *Beale* v. *United States, supra,* affirming an order refusing to admit to citizenship a person unwilling to bear arms because of conscientious reasons (71 F. 2d at 739):

> * * * having in mind that Congress is vested with the power and authority to fix and determine the conditions upon which

> the privilege of citizenship may be conferred, it is worthy of note that there have been no amendments affecting the provisions of the statutes relating to the requirements for the admission to citizenship. We must conclude, therefore, that these statutory requirements as construed by the Supreme Court have congressional sanction and approval.

Compare *United States* v. *Midwest Oil Co.*, 236 U. S. 459.

C. *The rule that an alien's willingness to bear arms in defense of the United States is a prerequisite for admission to citizenship was reenacted by Congress in 1940*

As we have shown, *supra*, pp. 15–16, the Court in the *Schwimmer*, *Macintosh*, and *Bland* case dealt with subdivisions Third and Fourth of Section 4 of the Naturalization Act of 1906 (*infra*, pp. 69–70), and with a form of oath which had been administratively prescribed by Rule 8 (c) of the Naturalization Regulations of July 1, 1929.

Subdivision Third provided that before an applicant could be admitted to citizenship, he must "declare on oath in open court * * * that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same"; subdivision Fourth required that it must be made to appear to the satisfaction of the court that during the five years preceding the

application, "he has behaved as a man * * * attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same."

Those subdivisions were repealed by Section 504 of the Nationality Act of 1940 (8 U. S. C. 904), and were replaced, respectively, by Sections 335 (a) and 307 (a) of the subsequent enactment (8 U. S. C. 735 (a), 707 (a)), which, with minor variations in language, enact the same requirements.

Section 335 (a) (*infra*, p. 65), provides that before an applicant for naturalization shall be admitted to citizenship, he shall take an oath in open court that, *inter alia*, he will "support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and * * * bear true faith and allegiance to the same." Section 307 (a) of the Nationality Act of 1940 (*infra*, p. 63), provides that no person shall be naturalized unless for a period of five years preceding the filing of his petition for naturalization he "has been and still is a person * * * attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States."

Moreover, the oath which previously had been administratively prescribed, and whose non-statutory basis had been inferentially criticized

by the dissenting minority in the *Macintosh* case,[4] was given statutory sanction; the exact language of the former oath was legislatively adopted by Section 335 (b), *infra*, pp. 65–66.

By thus reenacting in every pertinent particular the substance of the statutory provisions considered in the earlier decisions, and by giving statutory authority to an oath theretofore required only by regulation, Congress readopted and reenacted the rule of the cases in question, that an alien applicant seeking citizenship must express without reservation his willingness to bear arms in defense of the United States. This is the more evident when it is considered that in the Nationality Act of 1940 Congress altered many other existing requirements of law and added many new ones. See *Apex Hosiery Co.* v. *Leader*, 310 U. S. 469, 488–489; *Missouri* v. *Ross*, 299 U. S. 72, 75; *United States* v. *Elgin, J. & E. Ry.* 298 U. S. 492, 500; *United States* v. *Ryan*, 284 U. S. 167–175; cf. *Helvering* v. *Winmill*, 305 U. S. 79, 82–83. As the present Chief Justice said in the *Apex Hosiery Co.* case (310 U. S. at 488–489):

> * * * The long time failure of Congress to alter the Act after it had been judicially construed, and the enactment by Congress of legislation which implicitly recognizes the judicial construction as ef-

[4] "It must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute." *Per* Hughes, C. J., 283 U. S. at 627.

> fective, is persuasive of legislative recognition that the judicial construction is the correct one. This is the more so where, as here, the application of the statute * * * has brought forth sharply conflicting views on the Court and in Congress, and where after the matter has been fully brought to the attention of the public and the Congress, the latter has not seen fit to change the statute.

As we have indicated, petitioner avoids the effect of this reenactment by saying nothing about it; the only argument against the effect of the Nationality Act of 1940 is that made by the dissenting judge below. Judge Woodbury said (R. 27–28):

> Following these decisions Congress passed the Nationality Act of 1940 (54 Stat. 1137) "To revise and codify the nationality laws of the United States into a comprehensive nationality code." By it Congress did not alter the terms of the oath of allegiance and so by inference it might be said to have adopted the interpretation placed upon the oath by the Supreme Court in the cases just referred to. But this inference seems to me to lose persuasive force by reason of the fact that Congress in its revision and codification did not include, when adding many new requirements for eligibility to citizenship by naturalization, a specific one of willingness to bear arms, but instead permitted that requirement still

to stand on an interpretation of the oath of allegiance by a closely divided court. It seems to me in consequence that no persuasive inference of Congressional adoption of the judicial interpretation of the oath of allegiance in the *Schwimmer, Macintosh* and *Bland* cases can safely be drawn from the Nationality Act of 1940. It seems to me that the permissible inferences from that statute neutralize one another.

The most obvious answer to this view is that Congress did not find it necessary to add the arms-bearing requirement for the reason that it was already included. Congress said nothing about it because there was nothing Congress needed to say. The House Report on the bill, H. Rep. 2396, 76th Cong., 3rd sess., was filed on June 5, 1940, nine days after the decision in *Apex Hosiery Co.* v. *Leader, supra.* The most painstaking lawyer in Congress, had he been tempted to doubt the reenactment rule, would have found confirmation thereof in the quotation just set forth. He could thus confidently have assumed that the rule of the *Schwimmer, Macintosh,* and *Bland* cases had been reenacted, particularly since the controversial oath had been put on a statutory foundation.

Nor can we agree with the suggestion of Judge Woodbury that decisions by a closely divided court are to be treated as though they were affirmances by an equally divided court, at least until Congress with a species of "me-too" legislation comes to the

support of the prevailing opinon. Here Congress for more than ten years refused to enact the substance of the dissents. We submit that in those circumstances there is no possible countervailing inference to be drawn from the Act.

The legislative history of the Nationality Act of 1940 is far from suggesting that, in a world where aggressors were already on the loose, the requirement that applicants for citizenship must promise to bear arms was to be left in suspense to await the appeal of the dissenting opinions to the brooding spirit of the law or to the intelligence of a future day. Cf. Hughes, *The Supreme Court of the United States*, 67–68. We cannot assume that Congress intended to leave open a question which for over ten years had been settled, and in respect of which it had consistently refused to take action.

The Nationality Act of 1940, as the reports indicate (S. Rep. 2150, 76th Cong., 3d sess., p. 2), was originally drafted under the direction of a presidential committee consisting of the Secretary of State, the Attorney General, and the Secretary of Labor. Their labors culminated in a draft code which was submitted to Congress on June 13, 1938. See Codification of the Nationality Laws of the United States, in 3 parts, House Committee Print, 76th Cong., 1st sess.; Hearings before the House Committee on Immigration and Naturalization, 76th Cong., 1st sess., on H. R. 6127 superseded

by H. R. 9980, pp. 405–692. After extensive hearings, *ibid.*, the bill was reported out with the comment, *inter alia* (H. Rep. 2396, 76th Cong., 3rd sess., p. 2), that—

> The proposed code represents a studied effort to draft a measure that would conform to the constitutional requirements—that the rules of naturalization be uniform and facilitate the naturalization of worthy candidates and, at the same time, protect the United States against adding to its body of citizens persons who would be a potential liability rather than an asset.

The Senate Report, filed September 23, 1940 (S. Rep. 2150, 76th Cong., 3d sess., p. 2), noted that "The proposed revision will greatly strengthen the laws of the United States concerned with the national defense."

These several reports, in the light of the notoriety of the *Schwimmer, Macintosh,* and *Bland* cases, and against the background of the settled rule of Congressional approval through acquiescence and reenactment, certainly lend no support to the suggestion that Congress in 1940, at a time when our own national safety was recognized to be in danger, meant to leave the arms-bearing requirement open for future judicial reconsideration. It cannot be supposed that the legal members of the Presidential drafting committee, who presumably were aware of the con-

sistent refusal of Congress to pass bills which would have enacted the dissenting opinions in those cases (*supra,* pp. 19–22), and who recommended legislative enactment of the former administrative oath (Codification of the Nationality Laws, part 1, p. 48, comment under draft sec. 334 (b); Hearings, *supra,* p. 467), intended *sub silentio* to permit the then recognized content of the oath to remain open to change. True, they did not comment specifically on the meaning which that oath had received; there was no need to, and we can properly assume that they were sound enough lawyers not to belabor the obvious.

We think it clear, therefore, that whatever the original meaning of the oath, whatever the additional sanction that it received through Congressional acquiescence, it stood on a new and independent legislative footing as a result of the enactment of the Nationality Act of 1940.

II. THE RULE THAT AN ALIEN APPLICANT FOR CITIZENSHIP MUST BE WILLING TO BEAR ARMS IN DEFENSE OF THE UNITED STATES IS CONSISTENT WITH THE BASIC PATTERN OF OTHER LEGISLATION DEALING WITH IMMIGRATION AND NATURALIZATION, AND DOES NOT CONFLICT WITH THE FIRST AMENDMENT IN ANY CONCEIVABLE ASPECT

Petitioner admits (Pet. Br. 9) that "naturalization is a privilege that may be granted or withheld at the sole discretion of the Congress." But he argues that generalized expressions in the naturalization laws are to be construed so as to

put the applicant for citizenship on a parity with the citizen (Pet. Br. 11–22), and, moreover, that they are to be construed in conformity with the First Amendment, which he assumes to include an exemption from military services on religious grounds (Pet. Br. 19–21).

We start from the same premise, the undoubted competence of Congress to prescribe conditions for naturalization. But, as we show that petitioner's other assumptions are not well founded, we reach a different result. We examine the Constitutional and statutory provisions governing the admission and expulsion of aliens, and the grant of citizenship by birth and through naturalization. We show that the existing law, in numerous vital respects, consistently discriminates in favor of the citizen against the alien, and in favor of the native-born citizen against the naturalized citizen. We show that the First Amendment does not guarantee exemption from military service on religious grounds, and that additional limiting amendments which proposed to grant such an exemption failed of adoption. We conclude, accordingly, that the refusal to confer citizenship upon an alien willing to perform only noncombatant service, while calling on the citizen for no greater contribution, involves no constitutional deprivation, and amounts at most to a statutory discrimination in favor of the citizen similar to many

others which have long been embedded in the statute book.

A. *Naturalization is a matter of statute, not of constitutional right*

The only Constitutional provision here in question is that part of Section 8, Article I, which gives Congress power "To establish an uniform Rule of Naturalization." So long as the rules established are uniform, so long as an alien with certain qualifications in Maine is treated on an equality with aliens having the same qualifications in Montana, the constitutional mandate is satisfied. Compare *The Federalist*, No. XLI.

Beyond that, the qualifications are for Congress to prescribe; it can condition the offer of the privilege as it sees fit. This rule, which petitioner does not question directly, is supported by a long line of authority. *Maney* v. *United States*, 278 U. S. 17, 22; *Zartarian* v. *Billings*, 204 U. S. 170, 175; *United States* v. *Ginsberg*, 243 U. S. 472, 475; *Luria* v. *United States*, 231 U. S. 9, 23.

The question for this Court is not, as Mr. Justice Holmes asserts in his dissenting opinion in the case of *Schwimmer*, one of what principles we should adhere to in admitting to citizenship, 279 U. S. at 655; rather it is, as Chief Justice Hughes correctly points out in his *Macintosh* dissent, a matter of what Congress has actually required. 283 U. S. at 627.

B. *The whole fabric of our immigration and naturalization laws negatives petitioner's contention that he is entitled to stand on a basis of equality with citizen conscientious objectors*

Petitioner states (Pet. Br. 23) that "in declaring allegiance to the Government of the United States he is willingly submitting himself to the same subjection to the powers of the government as the native born citizen is under. He is not attempting to 'conclude the Government' or 'stay its hand'. He only wishes to be placed on a par with the natural born citizen and not come in on an unequal footing."

Elsewhere, too, it seems to have occasioned surprise that the *Schwimmer* case and the decisions following it "require of the applicants for citizenship a higher degree of patriotism than we require of native-born citizens." See *In re Losey*, 39 F. Supp. 37, 38 (E. D. Wash.); compare the ruling of the district court in the present case (R. 13).

But the Constitution and laws of the United States, whether rightly or wrongly we need not now pause to consider, have never put aliens and citizens on a parity. The individual entering the United States by birth and thus becoming a citizen thereof is in numerous important respects favored over the alien who seeks to enter the United States, over the alien who once admitted seeks to remain therein, and over the alien who

admitted and remaining therein seeks to become a citizen thereof.

1. Aliens who are idiots, imbeciles, feeble-minded, epileptic or insane, aliens who are afflicted with tuberculosis or with a loathsome or dangerous contagious disease, and aliens who may otherwise be classed as mentally or physically defective, are excluded from admission to the United States. 8 U. S. C. 136 (a), (c), (d). Unfortunates born in the United States with similar disabilities are not excluded and acquire American citizenship at birth. Amendment XIV, Sec. 1.

The Chinese were, for many years excluded from admission to the United States for purposes of permanent residence, until December 1943. 8 U. S. C., 1940 ed., ch. 7; Act of December 17, 1943, c. 344, 57 Stat. 600. Other Asiatics are still excluded. 8 U. S. C. 136 (n). But a Chinese or a Japanese child born in the United States acquires American citizenship. *United States* v. *Wong Kim Ark*, 169 U. S. 649; cf. *Yasui* v. *United States*, 320 U. S. 115.

2. Aliens lawfully admitted to the United States are subject to deportation if at any time after admission they become anarchists, opposers of organized government, or advocates of violent overthrow of the government and of like doctrines. 8 U. S. C. 137. Similarly, all aliens brought to the United States in violation of law are subject to deportation, with exceptions not here material,

8 U. S. C. 154, 155; this includes, in addition to the classes already mentioned, persons convicted of crimes involving moral turpitude, 8 U. S. C. 136 (e); polygamists, 8 U. S. C. 136 (f); prostitutes and the like, 8 U. S. C. 136 (g); persons likely to become a public charge, 8 U. S. C. 136 (i); and persons over sixteen years of age, physically capable of reading, who are illiterate. 8 U. S. C. 136 (o). Much similar conduct involves deportation even after lawful entry, 8 U. S. C. 155. Here again, there is a discrimination in favor of citizens; we do not deport native-born anarchists, felons, polygamists, prostitutes, paupers, or illiterates.

3. Similar discriminations are apparent when the grant of citizenship by naturalization is compared with the grant of citizenship by birth. For those born in the United States, citizenship is acquired by birth, regardless of race. Amend. XIV, Sec. 1; *United States* v. *Wong Kim Ark*, 169 U. S. 649; cf. Amend. XV. But we deny the privilege of citizenship by naturalization to high-caste Hindus, *United States* v. *Thind*, 261 U. S. 204, and to Japanese, *Ozawa* v. *United States*, 260 U. S. 178; *Yamashita* v. *Hinkle*, 260 U. S. 199; *Toyota* v. *United States*, 268 U. S. 402, while the right of Filipinos to become American citizens turns on whether or not they have served in the armed forces of the United States in enumerated wars. 8 U. S. C. Supp. IV, 703.

Certain other requirements—that the applicant speak English (8 U. S. C. 704), and that he be attached to the principles of the Constitution (8 U. S. C. 707 (a))—requirements which obviously could not be met by one obtaining citizenship by birth, we do not dwell upon, since they presumably would not apply to minor children below the age of understanding who acquire citizenship through a parent's naturalization. Compare 8 U. S. C. 713–716, 735 (a), 739. But it may be well to note in passing that while the alien is required to be attached to the principles of the Constitution as a prerequisite to obtaining citizenship, see 8 U. S. C. 707 (a), the native-born citizen is not required to prove such attachment as a condition to retaining citizenship.

4. And finally, once the alien has been duly naturalized, he is still not on an equal footing with the native-born citizen. He can never be President. U. S. Const., Art. II, Sec. 1, cl. 5. He must wait seven years before he is eligible to be a Representative in Congress, Art. I, Sec. 2, cl. 2, and nine years before he can be a Senator. Art. I, Sec. 3, cl. 3. And whatever may be the present status of the long-established rule that he holds his citizenship upon the condition that it may be subsequently challenged, see *United States* v. *Ginsberg*, 243 U. S. 472, 475, certain it is that in view of the law as to expatriation he has not the same freedom as the native-born citizen to change his residence.

The provision that a naturalized American citizen, returning to the land of his birth and remaining there for a stated period *animus manendi*, thereby expatriates himself, is first found in the so-called Bancroft treaties.[5] Thereafter it was made universally applicable to naturalized citizens returning to all countries of origin. Section 2 of the Act of March 2, 1907, 34 Stat. 1228. But there was only a presumption of expatriation; "it is a matter of option and intention." *United States* v. *Gay*, 264 U. S. 353, 358. In the face of the Government's obligation to accord to naturalized citizens abroad the same protection that it extends to native-born citizens, R. S. 2000; 8 U. S. C. 903a, the presumption rule broke down in practice. See Codification of the Nationality Laws of the United States, *supra*, part 1, pp. 69–76, notes under draft Sec. 402; Hearings on the Nationality Act, *supra*, pp. 493–501. Accordingly, the Nationality Act of 1940 prescribes that, subject to stated exceptions, the naturalized citizen loses his American nationality entirely by resid-

[5] Art. IV of the Treaty of February 22, 1868, with the King of Prussia in the name of the North German Confederation, 15 Stat. 615, 616; Art. IV of the Treaty of May 26, 1868, with Bavaria, 15 Stat. 661, 662 (but see Art. III of the Protocol, 15 Stat. at 664–666); Art. IV of the Treaty of July 27, 1868, with Wurttemberg, 16 Stat. 735, 736; Art. IV of the Treaty of August 1, 1868, with Hesse, 16 Stat. 743, 745. See also Art. III of the Treaty of January 22, 1873, with Denmark, 17 Stat. 941, 942–943. Compare Art. III of the Treaty of May 13, 1870, with Great Britain, 16 Stat. 775, 776.

ing abroad for a period varying from two to five years. Sections 404–406; 8 U. S. C. 804–806. The native-born citizen is not under the same restraint, and, subject only to a presumption of expatriation in two instances—Sections 402, 401 (c), (d); 8 U. S. C. 802, 801 (c), (d)—can wander about the globe at will and settle down anywhere, for any length of time, without danger of losing his citizenship. *Cf. Perkins* v. *Elg*, 307 U. S. 325, 329.

We have gone thus fully into these distinctions because we consider them essential to a clear understanding of what is involved here—understanding that is befogged by petitioner's insistence that he stand on a basis of equality with the citizen, understanding that has similarly been clouded over by the uncritical acceptance in many quarters of Mr. Justice Holmes' *Schwimmer* dissent, which fails to distinguish what Congress has demanded for citizenship from what Congress should demand, and which analogizes the admission into citizenship to the deportation of aliens and the expulsion of citizens. 279 U. S. at 655.

C. *The freedom of religion guaranteed by the First Amendment does not include an exemption on religious grounds from military service or from the duty of bearing arms*

While, as we have indicated, the question here is purely statutory, a problem of ascertaining what qualifications Congress has required of ap-

plicants for citizenship, petitioner's argument is permeated with the suggestion that Congress lacks constitutional power to exact full military service from individuals who have religious scruples against bearing arms (Pet. Br. 14–22). The dissenting judge below seems to have felt that the requirement imposed here was somehow lacking "in conformity with the First Amendment" (R. 33). And a similar doubt has inevitably conditioned all thinking on the problem. It is not without significance that while this Court in the *Macintosh* case emphatically pointed out that "The privilege of the native-born conscientious objector to avoid bearing arms comes not from the Constitution, but from the acts of Congress," 283 U. S. at 624, the implications of the Chief Justice's strong dissent were definitely to the contrary, notwithstanding his preliminary assumptions, 283 U. S. at 627.

We think it may be helpful, therefore, in considering the problem of the extent to which Congress has conditioned naturalization, to consider as well the extent of the Congressional power to exact military service. That issue is a narrow one: Has the native-born conscientious objector a constitutional right, in view of the First Amendment, to be exempted from bearing arms?

In the *Macintosh* case, this Court, as above noted, answered the question in the negative. 283 U. S. at 623–624. We believe that an examination

of the history of the First Amendment will demonstrate the soundness of that conclusion.

As petitioner shows (Pet. Br. 14–15), Rhode Island, Pennsylvania, Virginia, and North Carolina, proposed an additional limiting amendment, at the time of the ratification of the Constitution, which would have placed the arms-bearing exemption of the conscientious objector beyond the reach of legislation. That proposed amendment read (1 Elliot's Debates 334–335; 2 *id.* 331; 3 *id.* 657–659; 4 *id.* 243–244):

> That any person religiously scrupulous of bearing arms is to be exempted upon payment of an equivalent to employ another to bear arms in his stead.

Petitioner likewise shows (Pet. Br. 15) that James Madison on June 8, 1789, presented to the House of Representatives a proposed list of amendments to the Constitution, from which ultimately emerged the present Bill of Rights. 1 Annals of Congress 434. As reported to the House on August 17 (1 Annals of Congress 749), the list included a fourth proposition which in time became the Second Amendment; it was as follows:

> A well regulated militia, composed of the body of the people, being the best security of a free state, the right of the people to keep and bear arms shall not be infringed: *but no person religiously scrupulous shall be compelled to bear arms.* [Italics added.]

The words "in person" were added to the italicized clause, 1 Annals of Congress, 766–767, but, as is well known, the entire clause as thus amended was eliminated before the proposal was submitted to the States.

The issue was sharply defined in the debates. Mr. Boudinot, who supported the exemption, said (p. 767):

> Now, by striking out the clause, people may be led to believe that there is an intention in the General Government to compel all its citizens to bear arms.

Per contra (p. 751):

> Mr. Benson moved to have the words "but no person religiously scrupulous shall be compelled to bear arms," struck out. He would always leave it to the benevolence of the Legislature, for, modify it as you please, it will be impossible to express it in such a manner as to clear it from ambiguity. No man can claim this indulgence of right. It may be a religious persuasion, but it is no natural right, and therefore ought to be left to the discretion of the Government * * *.

We think it clear, from this significant excision from the Second Amendment, and from the failure to adopt the substantially similar provision proposed by four states, *supra*, p. 40, that the guarantee of religious freedom in the First Amendment does not include the right to refuse to bear arms on religious grounds. It follows that

the opinion of this Court on that point in the *Macintosh* case (283 U. S. at 623–624) correctly reflects the views of the Founders.*

*It is interesting to note that Roger Williams, the pioneer of religious liberty in the United States, defined liberty of conscience in terms that required all to contribute to the common defense. See his famous "Parable of the Ship of State", written in 1655:

"There goes many a ship to sea, with many hundred souls in one ship, whose weal and woe is common, and is a true picture of a commonwealth, or a human combination or society. It hath fallen out sometimes, that both papists and protestants, Jews and Turks, may be embarked in one ship; upon which proposal I affirm, that all the liberty of conscience, that ever I pleaded for, turns upon these two hinges—that none of the papists, protestants, Jews, or Turks, be forced to come to the ship's prayers and worship, nor compelled from their own particular prayers or worship, if they practice any. I further add, that I never denied, that notwithstanding this liberty, the commander of this ship ought to command the ship's course, yea, and also command that justice, peace and sobriety be kept and practiced, both among the seamen and all the passengers. If any of the seamen refuse to perform their services, or passengers to pay their freight; if any refuse to help, in person or purse, toward the common charges or defence; if any refuse to obey the common laws and orders of the ship, concerning their common peace and preservation; if any shall mutiny and rise up against their commanders and officers; if any should preach or write that there ought to be no commanders or officers, nor corrections nor punishments, no laws nor orders, I never denied, but in such cases, whatever is pretended, the commander or commanders may judge, resist, compel and punish such transgressors, according to their deserts and merits." [Letter, To the Town of Providence, in 6 Williams, *Collected Works* (Narragansett Club ed. 1866–1874), 278 *et seq.*, reprinted in Ernst, *The Political Thought of Roger Williams*, 74.]

Petitioner badly misreads the sequence of events when he suggests (Pet. Br. 15) that the rejected clause was merged into the present First Amendment, a misreading which necessarily colors much of his subsequent argument (Pet. Br. 13–21).

There may well be instances, of course, where the rejection of a particular clause or section can be explained on the ground that it was surplusage or mere redundancy. But that was not the case here. Here the rejected proposition would have limited the power of the United States. It failed of adoption. Consequently the power of the United States was not so limited. What petitioner is really saying, therefore, is that since the proposal was advisedly rejected, we should read the First Amendment as though it had been adopted. It would be difficult to imagine a more obvious *non sequitur*.

But it is argued that because Congress had always made concessions to conscientious objectors in its military legislation, from the Militia Act of 1792 down in unbroken line to the Selective Training and Service Act of 1940, it must be taken to have made a like concession with respect to conscientiously objecting aliens who seek citizenship.

The unbroken line of legislation is not, of course, an argument against the existence of constitutional power. The circumstance that conscientious objectors are legislatively exempted does not show lack of power to abrogate the ex-

emption. Constitutional grants do not atrophy through non-user. Much of the judicial power conferred by Article III has yet to be exerted, and even in our own day we have witnessed the far-reaching scope of the commerce power once Congress sees fit to employ its latent sweep. *Cf. Mabee* v. *White Plains Publishing Co.*, No. 57, this Term, decided February 11, 1946.

Petitioner's final contention is that the oath in the naturalization laws should be interpreted in the light of this current of Congressional tenderness for the conscientious objector in militia and conscription laws. Whatever may have been the original force of this argument, it fails at the present time; there has been a counter trend in the field of naturalization, where for over sixteen years conscientious objectors have not been eligible for citizenship. And, as we have pointed out above, Congress has not only approved and reenacted this latter trend, but it has refused to abandon it. *Supra,* pp. 17–30.

What is left, therefore, is a situation where Congress by statute exacts from an alien a requirement which it does not similarly exact from a citizen, though it has constitutional power to do so. The resultant discrimination is a matter of legislative policy, no different from the general statutory scheme, *supra,* pp. 34–38, which discriminates in favor of the citizen in many other instances as well.

III. PETITIONER DOES NOT COME WITHIN THE 1942 AMENDMENTS TO THE NATIONALITY ACT OF 1940 WHICH PERMIT NATURALIZATION OF NONCOMBATANTS WHO HAVE SERVED IN THE ARMED FORCES

In 1942, amendments to the Nationality Act of 1940 granted special privileges in respect of naturalization to aliens who served in the armed forces of the United States in time of war by eliminating or changing the requirements as to declaration of intention, period of residence, education, and fees. Act of March 27, 1942, c. 199, sec. 1001, 56 Stat. 176, 182, adding Title III to the Nationality Act of 1940, 8 U. S. C., Supp. IV, 1001–1005; Act of December 7, 1942, c. 690, 56 Stat. 1041, adding Section 323a to the Nationality Act of 1940, 8 U. S. C., Supp. IV, 723a; both *infra*, pp. 66–68, 63–65. The Act of March 27, 1942, which applies to persons serving in the present war, specifically provides that its benefits shall not be available to "any conciention objector who performed no military duty whatever or refused to wear the uniform"; the Act of December 7, 1942, for the benefit of those with service on the Mexican Border and during World War I, is restricted to a person "who was not a conscientious objector who performed no military duty whatever or refused to wear the uniform."

Petitioner admits (Pet. Br. 25) that he "cannot take advantage of the special provisions of these two amendments since he has never served in the armed forces. But he does not invoke those sections directly." He argues that "the

important feature of the 1942 legislation is that Congress, without abrogation or modification of the statutory requirements as to oath and attachment to the principles of the Constitution has expressly recognized that such requirements may be fulfilled by an otherwise qualified alien applicant despite his religious conviction against bearing arms" (Pet. Br. 26).

This argument was rejected below, we submit rightly so. As the circuit court of appeals said (R. 26–27):

> Congress, we think, in passing this amendment,[1] intended to reward the conscientious objectors who had served or were serving in the armed forces by allowing them to take an oath which did not conflict with their religious scruples. It has passed no legislation expressly changing the meaning as interpreted by the Supreme Court, and we do not believe that it intended to extend this reward beyond this particular group. We do not think that it meant to give the benefit of such an inferential change in the meaning of the oath of allegiance to any alien conscientious objector who like the appellee here has not served and is not serving in the armed forces, or to conscientious objectors opposed to participate in non-combatant service who have been assigned to work of national importance under civilian direction.

[1] The court considered only the Act of March 27, 1942.

We think that this conclusion is sound, that it is consistent with this Court's approach to similar problems in the naturalization laws, see *Toyota v. United States,* 268 U. S. 402, and that petitioner's contentions break down, once the amendments and their legislative history are considered. Clearly, nothing in the language of the 1942 amendments supports the broad and generalized implications which petitioner seeks to draw therefrom; these amendments do not in terms water down the meaning of the oath. The committee reports and congressional debates are likewise barren of any reference to the status of conscientious objectors. Nor do they contain any suggestion that it was intended to extend the benefits of the amendments to persons not specifically falling within their terms. See S. Reps. 989, 1664, and H. Reps. 1765, 1896, 77th Cong., 2d sess.; 88 Cong. Rec. 1589, 1790–1791, 1794. See also H. Rep. 1710, 77th Cong., 2d sess. The statutes in question have the limited purpose of rewarding alien members of the armed forces and alien veterans by facilitating their naturalization. As the Senate Committee said (S. Rep. 989, 77th Cong., 2d sess., p. 7), "The bill provides that an alien honorably serving in our armed forces during the present war may acquire citizenship without regard to the normal qualifications of age, length of residence, and education. This provision also carries forward the policy of the United States during the last World War and provides appropriate and

expeditious procedure for its administration." We note in the margin the earlier statutes in question.[8]

It does not follow that the 1942 amendments, which have the effect of authorizing the naturalization of persons who are actually performing or have performed noncombatant military service, represent a congressional declaration that aliens outside that specified group are similarly entitled to naturalization.[9] Congress had dealt generally with the subject of naturalization in 1940. It is reasonable to suppose that, if it had intended to permit the naturalization of aliens who were willing to defend the United States in a noncombatant capacity only, it would have expressed its intention at that time. But, as we have shown (*supra*, pp. 23–30), it took the other alternative. It then reenacted and fortified the arms-bearing rule, as previously it had consistently failed to adopt bills seeking a relaxation of that requirement. Having made that deliberate choice in 1940, it would certainly be extremely unreasonable to suppose that Congress would have reversed itself on a considered decision dealing with a qualification of gen-

[8] Act of May 9, 1918, c. 69, 40 Stat. 542; Act of July 19, 1919, c. 24, 41 Stat. 222; Act of May 26, 1926, c. 398, 44 Stat. 654; Act of March 4, 1929, c. 683, 45 Stat. 1545; Act of May 25, 1932, c. 203, 47 Stat. 165; Act of June 24, 1935, c. 288, 49 Stat. 395; Act of August 23, 1937, c. 735, 50 Stat. 743; Act of June 21, 1939, c. 234, 53 Stat. 851; Section 324 of the Nationality Act of 1940, 8 U. S. C. 724.

eral application while passing an amendment designed to cover only a limited group deemed worthy of preferred treatment. It is not likely that in legislation of limited application Congress intended to effect, without a word of comment, such a fundamental change in the requirements for naturalization. We cannot properly assume that in such cavalier fashion, by silent indirection, Congress intended to depart from the established rule of exacting from the general body of applicants for citizenship a promise to bear arms if necessary. Compare *Robertson* v. *Railroad Labor Board*, 268 U. S. 619, 627.

The result reached by the court below had in consequence been arrived at also by two district courts. *In re Kinloch*, 53 F. Supp. 521 (W. D. Wash.); *In re Sawyer*, 59 F. Supp. 428 (D. Del.).

But petitioner urges, adopting the views of the dissenting judge below (R. 29), that the oath cannot mean one thing to an alien who has served in the armed forces and another to one who has not (Pet. Br. 26–27), a view which appears to have led the district court for the District of Columbia to hold that even a noncombatant who has served in the Army cannot be admitted to citizenship unless he is unqualifiedly willing to bear arms in the future. *In re Nielsen*, 60 F. Supp. 240.

We think, however, that this consideration is not controlling. We are not dealing with lex-

icographers' definitions; the problem is one of ascertaining whether a particular word was used by Congress with the same or with differing meanings. This Court has frequently applied the rule that a word may mean one thing in one section of a statute and yet have a broader or narrower scope when used elsewhere in the same act. *E. g., Helvering* v. *Stockholms &c. Bank,* 293 U. S. 84, 86–88; *Atlantic Cleaners & Dyers* v. *United States,* 286 U. S. 427, 433–434. Similarly the expression in Article III of the Constitution, "all Cases * * * arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority," has a far broader meaning than the almost literal copy in Section 24 (1) of the Judicial Code, 28 U. S. C. 24 (1), "all suits * * * where the matter in controversy * * * arises under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority." Compare *Puerto Rico* v. *Russell & Co.,* 288 U. S. 476, 485; *Gully* v. *First National Bank,* 299 U. S. 109, 113–114.

And while, standing alone, there might be persuasiveness in petitioner's contention that the oath must have been intended by Congress to mean the same to all applicants, we think that the argument loses its force in the light of the other considerations canvassed above. Such an argument is, after all, but an aid to construction, an approach; it cannot be used to arrive by backhanded indirection

at a result which Congress on numerous occasions refused to reach directly. This becomes even more apparent when we consider the origin of the proviso excluding from veterans' benefits in naturalization statutes persons who were complete conscientious objectors who performed no military service or who refused to wear the uniform.

That provision was not new in 1942. Petitioner's argument assumes that it was new, and that it therefore reflects a legislative intention to relax the arms-bearing requirement as it existed in 1940. We have shown why the implications which he seeks to draw from the amendments fail, but the point now is that even those implications necessarily rest upon a preliminary assumption of novelty.

Actually, however, the 1942 proviso excluding complete objectors was not new. It originated in the Act of May 26, 1926, c. 398, 44 Stat. 654, 8 U. S. C. 241 (*infra*, p. 70), which made provision for the more expeditious naturalization of alien veterans of the first World War.[9]

[9] The Act of May 9, 1918, c. 69, 40 Stat. 542, amended the Naturalization Act of 1906, by providing that alien members of the armed forces could be naturalized without fulfilling the usual residence requirements and without filing a preliminary declaration of intention. The provisions of the Act were extended by the Act of July 19, 1919, c. 24, 41 Stat. 222, to apply for a limited time to alien veterans of the first World War.

The Act of May 26, 1926, contained a two year limitation for naturalization of alien veterans, and its provisions were

As in the case of the 1942 amendments, the legislative history of the 1926 Act is silent as to the position of conscientious objectors generally. See H. Reps. 382, 871, S. Rep. 566, 69th Cong., 1st sess.; 67 Cong. Rec. 4784–4785, 7334, 7392, 7956–7960, 8533, 9749, 9799, 9801. Thus, the Senate Committee which reported an early draft, one that did not include the proviso, stated (S. Rep. 566, 69th Cong., 1st sess., p. 2): "It is believed that the privileges given by this bill are but a measure of simple justice to those aliens who did not use the shield of their alienage to avoid service in our forces. * * * These aliens voluntarily met one of the greatest tests of patriotic citizenship."

The 1926 Act was passed some years before the arms-bearing requirement applied by the Naturalization Service was approved in the *Schwimmer*, *Macintosh*, and *Bland* cases and be-

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extended by the Acts of March 4, 1929, 45 Stat. 1545, and May 25, 1932, 47 Stat. 165. The 1932 Act was in turn extended by the Acts of June 24, 1935, 49 Stat. 395, August 23, 1937, 50 Stat. 743, and June 21, 1939, 53 Stat. 851. The last extension was until May 25, 1940. Section 324 of the Nationality Act of 1940, 54 Stat. 1149, 8 U. S. C. 724, provides for expeditious naturalization of persons who have served honorably in the military forces for three years. This section does not, however, contain the provision as to conscientious objectors. The legislative history of the section does not explain the omission. See S. Rep. 2150, 76th Cong., 3d sess., pp. 2–3; Hearings on the Nationality Act, *supra*, pp. 106–108, 450–451.

came a question which provoked general discussion. We therefore think it reasonable to assume that the proviso was originally adopted, not with a view to enlarging the classes of aliens eligible to naturalization, but rather to make certain, out of an abundance of caution, that a particular class—the complete conscientious objectors—should not be accorded the special dispensation of the other relaxations accorded to alien veterans. It may well be, therefore, on the basis of purely logical considerations, on the assumption that the oath must be deemed to have the same content for veterans and non-veterans alike, that the weight of reason is with *In re Nielsen, supra,* which refused to naturalize a non-combatant veteran, and not with petitioner or the dissenting judge below, who would naturalize all non-combatants whether veterans or not. *Cf. Toyota* v. *United States,* 268 U. S. 402.

We believe, however, that the conclusion reached by the court below and by *In re Kinloch* and *In re Sawyer,* both *supra,* is not only preferable but correct: the noncombatant veteran is entitled to naturalization, the noncombatant non-veteran is not.

For we believe that the conclusion to be drawn from all the legislative evidence considered above is properly this: Congress was considering what it deemed to be two distinct problems. One was naturalization generally, the other was naturaliza-

tion for veterans. In dealing with the former problem, it insisted that alien applicants for citizenship manifest an unqualified willingness to bear arms, and refused on numerous occasions to change or relax that requirement. In dealing with the veteran question, it insisted only that the veteran should not have been a complete conscientious objector—but without indicating that it was concerned in that connection with the problem in its general application. The result favors the noncombatant alien veteran over the noncombatant alien non-veteran, and is thus consistent with the pattern of much else in the naturalization laws.

We conclude, therefore, that the relaxation of the oath so far as noncombatant alien veterans is concerned can no more be held to include petitioner than can any of the other statutory waivers which the 1942 amendments extended. And the parallel handling of the two lines of statutes shows even more clearly that Congress never had the slightest intention, when it passed the amendments now in question, of reversing under cover of silence and outward unawareness a consistent pattern of general application which over more than a decade's time it had refused to vary by overt alteration.[10]

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[10] Petitioner's suggestion (Pet. Br. 33, note 14) that Miss Bland would now appear to be eligible for citizenship under the Act of December 7, 1942, *supra*, turns on whether her

IV. WHILE THE *SCHWIMMER*, *MACINTOSH*, AND *BLAND* CASES ARE NOT OPEN FOR RECONSIDERATION HERE IN VIEW OF SUBSEQUENT CONGRESSIONAL ACTION, THE LOGIC OF EVENTS SINCE THEY WERE DECIDED CONFIRMS THEIR SOUNDNESS

1. As we have pointed out, *supra* pp. 17–30, Congress through its silence in the years following *United States* v. *Schwimmer*, 279 U. S. 644, *United States* v. *Macintosh*, 283 U. S. 605, and *United States* v. *Bland*, 283 U. S. 636, must be taken to have approved the rulings in those cases, and in 1940, by reenacting in substantially unaltered form the statutory provisions involved in those decisions and by giving statutory sanction to the oath there considered which heretofore had been prescribed only administratively, it clearly reenacted the requirements for naturalization as interpreted by this Court. We have also pointed out that Congress consistently refused to enact into law bills which would have permitted the naturalization of alien conscientious objectors. *Supra*, pp. 19–22.

membership in "the reconstruction unit of the United States Government" and her performance of "the duties of a nurse in the psychiatric department at Brest, France" (Record in *United States* v. *Bland*, No. 505, Oct., T., 1930, p. 14) constituted membership in "the military or naval forces of the United States" as defined in the Act, and also on whether her going to France "the day the armistice was signed" (*ibid.*) falls within the prescribed time limits. Whatever the answer to these questions, they do not concern us here; they throw no light on whether the Act helps petitioner, who admittedly is not within its terms.

In view of this compelling legislative history of Congressional action and of highly significant Congressional inaction, the rule of the *Schwimmer, Macintosh,* and *Bland* cases has become a statutory rule, having an independent legislative basis, which, we submit, can be reconsidered only by Congress, and which is not open for reconsideration or reexamination here.

We need not stop now to inquire when and to what extent adherence to the precept of *stare decisis* is either necessary or desirable. There is here no question of common law, requiring resolution of the paradox that "law must be stable and yet it cannot stand still," Pound, *Interpretations of Legal History,* 1; *cf.* Cardozo, *The Growth of the Law, passim.* There is before this Court no problem of reconciling situations which involve similar factual patterns embroidered with varying niceties of legal expression, such as this Court considered against an equivocal background of legislative history in *Helvering* v. *Hallock,* 309 U. S. 106. The present case does not require a reexamination of constitutional doctrine in the light of legislative reenactments which necessarily question earlier judgments or decisions on constitutional issues. See *Helvering* v. *Griffiths,* 318 U. S. 371, 400–401, discussed in Petitioner's Brief, pp. 33–34. Nor is there here any question of either the power or the propriety of this Court's reexamination and reconsideration of its prior

constitutional determinations; we have ourselves, *supra*, pp. 39–42, invited a reexamination of the constitutional aspect of the *Macintosh* decision.

The proposition here is broader and bolder: It is that this Court rewrite an Act of Congress. It is that this Court, by reconsidering the steps which led to a result which Congress has since independently adopted, arrive at a new result which Congress advisedly refused to adopt.

We submit that there is no authority for such action. While some of the reasoning underlying the decisions in question may have been disapproved in another setting since their date, *cf. Schneiderman* v. *United States*, 320 U. S. 118, 132, 135, we are not now dealing with judicial decisions or legal reasoning, but with a result which the national legislature has adopted and refused to alter. If that result is now to be rejected, if the requirement that an applicant for citizenship must be willing to bear arms is to be relaxed, specific Congressional action to that effect is necessary.

2. But we do not wish to be understood as questioning in any degree the soundness of the decisions in the *Schwimmer*, *Macintosh*, or *Bland* cases. It is true that the opinion of this Court in the *Schwimmer* case has not been deemed as quotable as the eloquent (though unclearly reasoned, see pp. 32, 38, *supra*) dissent of Mr. Justice

Holmes, and that the literary quality of the *Macintosh* opinion may suffer by comparison with Chief Justice Hughes' magistral dissent. But we are dealing with these pronouncements as law, and not as literature or logic. And if we pay heed to the oft-repeated admonition that "The life of the law has not been logic: it has been experience" (Holmes, *The Common Law,* 1), we are forced to the conclusion that the inexorable sweep of our national experience since 1929 and 1931 confirms the wisdom and the statesmanlike instinct of the majority opinions.

When those cases were decided, the world was at peace. The Kellogg-Briand Pact, signed on August 27, 1928, and proclaimed on July 24, 1929 (46 Stat. 2343), was assumed to mark in fact as well as in law the end of human wars. The memory of the first World War was receding into a background of unreality. The evacuation of the Rhineland in 1930, five years before the treaty date, appeared to usher in a new era of international good-feeling. The National Socialists were a small party in Germany, not regarded seriously anywhere, and Manchuria was still being administered under Chinese suzerainty. War was then widely considered to be the nadir of human conduct. The doctrine of pacifism—of non-resistance—was popular. At such a time and against such a background it is hardly surprising that the

denial of citizenship to well-educated and well-behaved individuals, all of whom were at least beyond probable military age and two of whom were women, on the ground of their refusal to bear arms in the exceedingly hypothetical and improbable event of another war, should have failed to command agreement among significant segments of the population. There were sharp cleavages in this Court, and, as indicated above, we are prepared to accept the statement in the Petition for Certiorari (p. 17) that contemporary professional comment on the decisions was predominantly adverse.

But the logic of events soon transferred the question of bearing arms from the field of hypothesis to that of stark immediacy. Peace yielded to aggression, year after tragic year. The Manchurian incident in September of 1931 was followed by the attack on Shanghai in 1932, by the rise to power of Hitler and his hordes in 1933, by the assassination of the Austrian Chancellor in 1934, by the violation of Ethiopia in 1935; there is no need to continue the grim chronology. The forces of darkness, once loosed, swept relentlessly and remorselessly over Europe and Asia, crushing political freedom, crushing religious freedom, overwhelming with a destructive nihilism every human value and every aspect of human decency, until finally millions of human lives were ruth-

lessly extinguished in a series of scientific slaughter-houses by the side of which the most outrageous excesses of the Huns of Atilla and the Barbarian hosts of old pale by comparison into orderly decency.

The dark tide struck this country in December 1941, and we were faced with a struggle for our very existence. We triumphed in the end, after many weary, costly, bloody months—because of force, superior force, force of arms. We learned anew in our generation the inescapable lesson that peace is not a matter of unilateral good intentions, that hard-earned liberties are not self-executing, and that to a free people war with all its horrors is yet infinitely preferable to submission. The liberties which we in consequence can still enjoy, and which petitioner can still enjoy, were preserved only through the exertion of millions of arms-bearing citizens, and through the costly sacrifice which over three hundred thousand Americans laid on the altar of freedom.

It is urged that petitioner has been willing to share in that sacrifice by offering to render noncombatant service. No one familiar with the limitless complexities of total warfare at the dawn of the atomic age would suggest for a moment that victory could have been achieved solely by men with rifles. But the noncombatants were after all only auxiliaries to the combatant forces, to those

who bore the heat and the brunt of battle, and Congress could reasonably exact a higher degree of service from those asking to join our political society than from those already members of the body politic. Those who seek the benefits of our citizenship may properly be called upon for willingness to meet its most arduous burdens.

In the retrospect of some fifteen years' hindsight, the requirements laid down by the decisions of this Court in the cases of *Rosika Schwimmer*, of *Douglas Macintosh*, and of *Marie Bland*, and thereafter legislatively adopted by the Congress, assume a prophetic wisdom that could not have been apparent to all in the peaceful years between the wars. The principle that one who desires citizenship in a free republic must be prepared if need be to fight in defense of his country's freedom has amply justified itself. The extent of one's attachment to the principles of the Constitution is properly measured by the contribution which may be exacted from him in a time of national peril; the test of one's willingness to defend the Constitution against all enemies becomes more critical and more real when the enemy actually attacks.

After the searing experiences of the past half-generation, there is certainly no occasion now to make available the priceless heritage of American citizenship to one who will not meet the price that Congress asks.

CONCLUSION

The judgment below should be affirmed.

Respectfully submitted.

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APPENDIX A

The pertinent provisions of the Nationality Act of 1940 (Act of October 14, 1940, c. 876, 54 Stat. 1137), as amended by the Act of March 27, 1942, c. 199, 56 Stat. 176, 182–183, and by the Act of December 7, 1942, c. 690, 56 Stat. 1041, are as follows:

SEC. 307. (a) (8 U. S. C. 707 (a)) No person, except as hereinafter provided in this Act, shall be naturalized unless such petitioner, (1) immediately preceding the date of filing petition for naturalization has resided continuously within the United States for at least five years and within the State in which the petitioner resided at the time of filing the petition for at least six months, (2) has resided continuously within the United States from the date of the petition up to the time of admission to citizenship, and (3) during all the periods referred to in this subsection has been and still is a person of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the United States.

* * * * *

SEC. 323a. (8 U. S. C., Supp. IV, 723a) A person who was a member of the military or naval forces of the United States at any time after April 5, 1917, and before November 12, 1918, or at any time after April 20, 1898, and before July 5, 1902, or who served on the Mexican Border as a member of the regular Army or National Guard from June

1916, to April 1917, who is not an alien ineligible to citizenship, who was not at any time during such period or thereafter separated from such forces under other than honorable conditions, who was not a conscientious objector who performed no military duty whatever or refused to wear the uniform, and who was not at any time during such period or thereafter discharged from the military or naval forces on account of his alienage, shall, if he has resided in the United States continuously for at least two years pursuant to a legal admission for permanent residence in lieu of the usual five years' residence within the United States and six months' residence within the State of his residence at the time of filing the petition for naturalization, during all of which two-year period he has behaved as a person of good moral character, be entitled at any time within one year after the date of approval of this Act to naturalization upon compliance with all of the requirements of the naturalization laws, except that—

(1) no declaration of intention shall be required;

(2) no certificate of arrival shall be required unless such person's admission to the United States was subsequent to March 3, 1924; and

(3) no residence within the jurisdiction of the court shall be required.

Such petitioner shall verify his petition for naturalization by the affidavits of at least two credible witnesses who are citizens of the United States, or shall furnish the depositions of two such witnesses made in accordance with the requirements of subsection (e) of section 327 of the Nationality Act of 1940, to prove the required residence.

good moral character, attachment to the principles of the Constitution of the United States, and favorable disposition toward the good order and happiness of the United States. On applications filed for any benefits under this Act, the requirement of fees for naturalization documents is hereby waived.

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SEC. 335. (8 U. S. C. 735) (a) A person who has petitioned for naturalization shall, before being admitted to citizenship, take an oath in open court (1) to support the Constitution of the United States, (2) to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the petitioner was before a subject or citizen, (3) to support and defend the Constitution and the laws of the United States against all enemies, foreign and domestic, and (4) to bear true faith and allegiance to the same, provided that in the case of the naturalization of a child under the provisions of section 315 or 316 the naturalization court may waive the taking of such oath if in the opinion of the court the child is too young to understand its meaning.

(b) The oath prescribed by subsection (a) of this section which the petitioner for naturalization is required to take, shall be in the following form:

I hereby declare, on oath, that I absolutely and entirely renounce and abjure all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which I have heretofore been a subject or citizen; that I will support and defend the Constitution and laws of the United States of America against all enemies, foreign and

domestic; that I will bear true faith and allegiance to the same; and that I take this obligation freely without any mental reservation or purpose of evasion: So help me God. In acknowledgment whereof I have hereunto affixed my signature.

* * * * *

SEC. 701. (8 U. S. C., Supp. IV, 1001) Notwithstanding the provisions of sections 303 and 326 of this Act, any person not a citizen, regardless of age, who has served or hereafter serves honorably in the military or naval forces of the United States during the present war and who, having been lawfully admitted to the United States, including its Territories and possessions, shall have been at the time of his enlistment or induction a resident thereof, may be naturalized upon compliance with all the requirements of the naturalization laws except that (1) no declaration of intention and no period of residence within the United States or any State shall be required; (2) the petition for naturalization may be filed in any court having naturalization jurisdiction regardless of the residence of the petitioner; (3) the petitioner shall not be required to speak the English language, sign his petition in his own handwriting, or meet any educational test; and (4) no fee shall be charged or collected for making, filing, or docketing the petition for naturalization, or for the final hearing thereon, or for the certification of naturalization, if issued: ***Provided, however,*** That (1) there shall be included in the petition the affidavits of at least two credible witnesses, citizens of the United States, stating that each such witness personally knows the petitioner to be a person of good moral character, attached to the principles of the

Constitution of the United States, and well disposed to the good order and happiness of the United States, (2) the service of the petitioner in the military or naval forces of the United States shall be proved by affidavits, forming part of the petition, of at least two citizens of the United States, members or former members during the present war of the military or naval forces of the noncommissioned or warrant officer grade or higher (who may be the witnesses described in clause (1) of this proviso), or by a duly authenticated copy of the record of the executive department having custody of the record of petitioner's service, showing that the petitioner is or was during the present war a member serving honorably in such armed forces, and (3) the petition shall be filed not later than one year after the termination of the effective period of those titles of the Second War Powers Act, 1942, for which the effective period is specified in the last title thereof. The petitioner may be naturalized immediately if prior to the filing of the petition the petitioner and the witnesses required by the foregoing proviso shall have appeared before and been examined by a representative of the Immigration and Naturalization Service.

SEC. 702. (8 U. S. C., Supp. IV, 1002) During the present war, any person entitled to naturalization under section 701 of this Act, who while serving honorably in the military or naval forces of the United States is not within the jurisdiction of any court authorized to naturalize aliens, may be naturalized in accordance with all the applicable provisions of section 701 without appearing before a naturalization court. The petition for naturalization of any petitioner under this section shall be made and sworn to

before, and filed with, a representative of the Immigration and Naturalization Service designated by the Commissioner or a Deputy Commissioner, which designated representative is hereby authorized to receive such petition in behalf of the Service, to conduct hearings thereon, to take testimony concerning any matter touching or in any way affecting the admissibility of any such petitioner for naturalization, to call witnesses, to administer oaths, including the oath of the petitioner and his witnesses to the petition for naturalization and the oath of renunciation and allegiance prescribed by section 335 of this Act, and to grant naturalization, and to issue certificates of citizenship: *Provided,* That the record of any proceedings hereunder together with a copy of the certificate of citizenship shall be forwarded to and filed by the clerk of a naturalization court in the district in which the petitioner is a resident and be made a part of the record of the court.

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SEC. 704. (8 U. S. C., Supp. IV, 1004) The provisions of this title shall not apply to (1) any person who during the present war is dishonorably discharged from the military or naval forces or is discharged therefrom on account of his alienage, or (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform: *Provided,* That citizenship granted pursuant to this title may be revoked as to any person subsequently dishonorably discharged from the military or naval forces in accordance with Section 338 of this Act; and such ground for revocation shall be in addition to any other provided by law.

APPENDIX B

Section 4 of the Naturalization Act of June 29, 1906, c. 3592, 34 Stat. 596, read in part as follows:

> That an alien may be admitted to become a citizen of the United States in the following manner and not otherwise:
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> * * * * * *
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> Third.—He shall, before he is admitted to citizenship, declare on oath in open court that he will support the Constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and particularly by name to the prince, potentate, state, or sovereignty of which he was before a citizen or a subject; that he will support and defend the Constitution and laws of the United States against all enemies, foreign and domestic, and bear true faith and allegiance to the same.
>
> Fourth.—It shall be made to appear to the satisfaction of the court admitting any alien to citizenship that immediately preceding the date of his application he has resided continuously within the United States five years at least, and within the State or Territory where such court is at the time held one year at least, and that during that time he has behaved as a man of good moral character, attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same. In addition to the oath of the applicant, the testimony of

at least two witnesses, citizens of the United States, as to the facts of residence, moral character, and attachment to the principles of the Constitution shall be required, and the name, place of residence, and occupation of each witness shall be set forth in the record.

The Act of May 26, 1926, c. 398, 44 Stat. 654, provided in part as follows:

SEC. 1. (8 U. S. C. 241) That (a) as used in this Act, the term "alien veteran" means an individual, a member of the military or naval forces of the United States at any time after April 5, 1917, and before November 12, 1918, who is now an alien not ineligible to citizenship; but does not include (1) any individual at any time during such period or thereafter separated from such forces under other than honorable conditions, (2) any conscientious objector who performed no military duty whatever or refused to wear the uniform, or (3) any alien at any time during such period or thereafter discharged from the military or naval forces on account of his alienage.

* * * * *

SEC. 7. An alien veteran shall, if residing in the United States, be entitled, at any time within two years after the enactment of this Act, to naturalization upon the same terms, conditions, and exemptions which would have been accorded to such alien if he had petitioned before the armistice of the World War, except that such alien shall be required to appear and file his petition in person and to take the prescribed oath of allegiance in open court.

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